

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

Loretta Greer,)	
)	
Petitioner,)	
)	
v.)	CV 04-1265 PHX JAT (VAM)
)	
Arizona Attorney General et al.,)	<u>REPORT AND RECOMMENDATION</u>
)	
<u>Respondents.</u>)	

TO THE HONORABLE JAMES A. TEILBORG, U.S. DISTRICT JUDGE.

Pending before the Court is petitioner's "Notice [Motion] Filing Writ of Mandamus Against State of Arizona to [sic] Transfer for * Safety * and Exhibits. (Doc. 150).

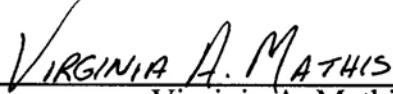
Petitioner asks that the Court order the Arizona Department of Corrections ("ADOC") to transfer her "TO A DIFFERENT STATE AND INSTITUTION FOR HER SAFETY ..." (Doc. 150). Specifically, petitioner asks that the Court enter a writ of mandamus pursuant to 28 U.S.C. § 1361 to accomplish this. (Id. at Attached p. 2). Petitioner has not filed an action pursuant to 28 U.S.C. § 1361. Her habeas action pursuant to 28 U.S.C. § 2254 may assert only claims alleging that her state court convictions and/or sentences violate her rights under the federal constitution or federal law. (See Doc. 90 at p. 4, citing Badea v. Cox, 938 F.2d 573, 574 (9th Cir. 1991)). Petitioner's request for a writ of mandamus ordering

1 ADOC to transfer her to another state or another institution does
2 not cognizable under 28 U.S.C. § 2254.

3 IT IS THEREFORE RECOMMENDED that petitioner's "Notice
4 [Motion] Filing Writ of Mandamus Against State of Arizona to [sic]
5 Transfer for * Safety * ..." (Doc. 150) be denied.

6 This Report and Recommendation is not an order that is
7 immediately appealable to the Ninth Circuit Court of Appeals. Any
8 notice of appeal filed pursuant to Rule 4(a)(1), Federal Rules of
9 Appellate Procedure, should not be filed until entry of the
10 district court's order and judgment. The parties shall have ten
11 (10) days from the date of service of this Report and
12 Recommendation to file specific written objections with the Court.
13 Thereafter, the parties shall have ten (10) days within which to
14 file a response to the objections. Failure to timely file
15 objections to the Magistrate Judge's Report and Recommendation
16 will result in a waiver of de novo review of the factual findings
17 and may result in the acceptance of the Report and Recommendation
18 by the district court without further review. See United States
19 v. Reyna-Tapia, 328 F.3d 1114, 1121 (9th Cir. 2003).

20 DATED this 7th day of November, 2005.

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23 Virginia A. Mathis
24 United States Magistrate Judge
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